

### REMARKS/ARGUMENTS

The Office Actions mailed December 11, 2007 and May 23, 2008 have been received and its content carefully considered. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1-21 are pending.

The Applicant appreciates the removal of the previous grounds of rejection. The Applicant also appreciates the withdrawal of the objections to the drawings. Additionally, the Applicant appreciates the removal of the objection of claim 17.

The amended claims are supported by the specification as a whole and the related drawings, including, for example, paragraphs 49-63 and 84.

#### Summary of Interview

On 10 June 2008, an interview was conducted with Examiner P. Danneman and S. Sahota (Reg. 47,051). Claims 1 and 21 were discussed. U.S. Patents 4,114,559, 6,217,213, and 6,564,120 were discussed with regard to the claims.

### **I. REJECTION OF CLAIMS (35 U.S.C. § 103)**

According to MPEP 706.02(j), the following establishes a *prima facie* case of obviousness under 35 U.S.C. §103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

**A. Claims 1 through 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogen, US 4,114,559 and further in view of Curry et al., US 6,217,213 B1 henceforth known as Curry and further in view of Richard et al., US 6,564,120 B1 henceforth know as Richard. The Applicants respectfully traverse.**

With regard to Claims 1, 2-15, 17 and 19-21, the Examiner states that the combination of reference teaches *Tracking device tracks time and temperature at discrete time intervals*. Specifically, the Examiner states that Rogen in combination with Curry disclose the use of a temperature monitoring button (Rogen, Column 1, lines 49-57) applied to each package to be monitored in a manner where the temperature of the package contents and not the ambient temperature are monitored. Further, the Examiner states that Rogen further discloses in at least Column 3, lines 65-67 that the temperature monitoring button may be adhered to the wall of a blood bag or other package for refrigerated material. Additionally, the Examiner states that Curry, per applicant's specification paragraphs [0045] through [0049] is a temperature monitoring button which may be adhered to the item being monitored and records time and temperature at discrete time intervals; Curry, at the time of the invention was representative of advances taking place in the semiconductor industry; Rogen teaches a device for monitoring the temperature using shape memory material which changes when exposed to a particular change in temperature; Curry discloses a device where a crystalline structure when exposed to a particular change in temperature also changes its characteristics in a manner that is representative of the temperature change. Therefore, the Examiner states that it

would have been obvious, at the time of the invention, to one of ordinary skill in the art to move from the use of a Rogen type device to a Curry device representing the latest innovation in technology and affording the user additional useful features.

However, the present invention does real time monitoring of the items status, while the combination of reference do not. There is no real-time clock tracking the timing of events associated with the tracking device at *all* times. In fact, Rogen teaches away from real time tracking, as it states, "It can then be determined from inspection at the end of the transportation and/or storage period that excessive temperature occurred at some time during such period." (col. 4, lines 48-51. Therefore, there is no actual real time monitoring of events, but rather the determination is made afterwards.

In claim 1 of Rogen, it states" Temperature monitoring device indicating thermal history comprising, means defining opposing first and second relatively fixed and movable subassemblies, respectively, means defining a material having a first configuration above a transition temperature which is formable into a second configuration below said temperature and having the capability of changing sharply from said second configuration to said first configuration at the transition temperature, said material being connected between said first and second subassemblies for working from said first configuration to said second configuration by relative movement of said subassemblies, means defining an indicator of working said material from said first to said second configuration and means for locking said indicator in position, and means defining an indicator of return of said material from its second configuration to its first configuration if the transition temperature is reached, and wherein the fixed subassembly is bondable to an item whose thermal history is to be monitored and comprises fixed position markers therein and said movable subassembly comprises window means alignable with said markers to constitute said indicator of working said material."

However, looking at claim 1 of Rogen, it is clear that the history is logged without a clock and especially not a real time clock, as the history is logged mechanically, by defining an indicator when a temperature is reached. Further, looking through the specification of Rogen to see the meaning of the means clause, it shows that, in col. 4, lines 19-22, "A visual indicator of positioning history is provided by a colored dot (e.g., blue) 33 mounted on cam 32 and another colored bead (e.g., red) 35 mounted on wire 30." Therefore, a colored dot, clearly does not teach or suggest of real time monitoring or any capability thereof and in fact teaches away.

According to MPEP §2145, "It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983). This portion of Rogen cannot be just ignored because according to MPEP §2141.02, "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)."

Additionally, Richard only registers the item when placed in the container. Further, the temperature monitoring in Richard is with regard to the container, rather than the item itself as the claim states.

The Examiner states that Curry, per applicant's specification paragraphs [0045] through [0049] is a temperature monitoring button which may be adhered to the item being monitored and records time and temperature at discrete time intervals. However, as shown above, Rogen is teaching away from the real time tracking of the events and therefore cannot be combined with Curry.

Additionally, also Curry does to disclose or any other reference that the monitoring is done real time for all times.

Therefore, the references fail to teach or suggest the claimed invention.

The Examiner states that Richard in at least Column 2, lines 25-28 discloses a computer operatively connected to a robot mechanism for controlling movement and access operation and for registering the contents of the storage receptacles.

However, Richard does not teach or suggest the access control granting rights to access and identifying the access as seen in claim 2. It only mentions about controlling the movement of robot and not the access to the storage. Additionally, Richard, Curry or Rogen fail to teach or suggest the access being integrated with the rack and access identifying access to the rack.

The Examiner also mentions that Richard in at least Column 3, lines 1-7 discloses the storage receptacles in a rectangular grid array. Richard in at least Column 3, lines 26-30 further discloses that the storage receptacles are analogous to safety deposit boxes with an inner and outer panel to allow access to the safety deposit boxes and further discloses in Column 7, lines 13-15 that storage containers may take any form known in the art.

However, Richard also does not teach or suggest the historical and current information being integrated into the construction of the inner storage unit and each tracking device having a unique identifier. There is no teaching or suggestion given by the Examiner. Further, neither Curry or Rogen teaches anything of the limitation of claim 3.

Additionally, no reason is given with regard to claim 7 where the electrodes of shelf are electrically connected to a network and in claim 8 where the items are electronically linked to the tray, the data storage device being controlled by the processing device. None of the combined reference make such a teaching.

With regard to claim 16, the Examiner states that Rogen and Curry do not disclose the following limitations: *Attaching a mechanical arm onto a surface of the storage unit; and* Richard does not specifically disclose a mechanical arm on the surface of the storage unit. However,

Richard in at least Column 6, lines 14-33 discloses that the robot mechanism grasps a hook or other coupling element on the storage unit to extract the storage unit from the storage receptacle.

Therefore it would be obvious, at the time of the invention, to a person of ordinary skill in the art that a hook or coupling element is essentially a mechanical arm which serves as a handle allowing the storage unit to be easily removed and replaced within the storage receptacle.

However, figure 4 clearly shows the robotic mechanism 54 and no mechanical arm is taught or suggested. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA). There is no actual teaching or suggestion.

With regard to the limitation: *Coupling a tracking device onto the mechanical arm*, the Examiner states that Richard does not specifically disclose a tracking device coupled to the mechanical arm. However, the Examiner states that Richard in at least Column 5, lines 46-50 does disclose the use of bar codes for enabling continued automated supervision and control. Further, the Examiner states that Richard in at least Column 6, lines 62-67 further discloses bar code applied to the end walls of the removable storage units, identifying the contents of the storage unit. Therefore, the Examiner states that it would be obvious, at the time of the invention, to a person of ordinary skill in the art that a bar code is a type of tracking device used for tracking inventory when the bar code is properly attached to the item being tracked.

However, first, there is no mechanical arm taught or suggested by Richard, and second the bar code are not a tracking “device” as claimed in the invention. Bar codes in themselves cannot track, and are not a device to track. They can only be separately used by another tracking device in order to track and administer the bar code. Therefore, the bar code is not a tracking device coupled to the mechanical arm, and it cannot be construed by one of ordinary skill as being modified to being a tracking device.

With regard to claim 18, the Examiner, states that, Rogen and Curry do not disclose the following limitation: *Wherein the mechanical arm is a restraint latch*. The Examiner states that Richard does not disclose a restraint latch. However, the Examiner argues that Richard in at least Column 6, lines 1-5 discloses that the storage unit has compartments and each is closed by a friction-lock, slide-lock or snap-lock covers. Therefore, the Examiner states that it would be obvious, at the time of the invention, to one of ordinary skill in the art that friction-locks, slide-locks or snap-lock covers are types of restraint latches which are used to prevent a storage unit from accidentally opening and spilling its contents while the storage unit is being inserted or removed from the storage receptacle and during the transportation from one location to another. Therefore, the Examiner states that it would have been obvious, at the time of the invention, to one of ordinary skill in the art to move from the use of a Rogen type device to a Curry device representing the latest innovation in technology which affords the user additional useful features. The further modification of Rogen and Curry with Richard would have been obvious, at the time of the invention, to one of ordinary skill in the art as Richard is the refrigeration system into which containers of biological materials which have a Rogen or Curry type temperature monitoring button are placed into for refrigeration, tracking and security purposes according to the Examiner.

However, according to MPEP 706.02(j), there must actually be a teaching or suggestion made, and as the Examiner states, Richard and the other references fail to teach or suggest a mechanical arm being a restraint latch. A friction lock in itself cannot be assumed to being a restraint latch, as the actual teaching must be made.

Therefore, all the limitations of the claimed invention are not taught or suggest by the combined references.

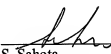
### CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. If it is believed that the application is not in condition for allowance, the Examiner is requested to contact the undersigned attorney to expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to Attorney Docket No. 87289.2240.

Respectfully submitted,

By: \_\_\_\_\_

  
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